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GIUSEPPE PENZATO and KESIA PENZATO

22 JANE DOE,) Case No. 3:10-cv-05154-MEJ
23 Plaintiff,)
24 v.) STIPULATED PROTECTIVE ORDER
25 GIUSEPPE PENZATO, an individual; and)
KESIA PENZATO, an individual,)
26 Defendants.)
27)
28)

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2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the court to enter the following
7 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
8 protections on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are entitled to
10 confidential treatment under the applicable legal principles. The parties further acknowledge, as
11 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from the court to
14 file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
19 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
20 Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their
22 support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including, among other
27 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
28 or responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action.

4 2.7 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.8 Outside Counsel of Record: attorneys who are not employees of a party to
7 this action but are retained to represent or advise a party to this action and have appeared in this
8 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
9 that party.

10 2.9 Party: any party to this action, including all of its employees, consultants,
11 retained experts, and Outside Counsel of Record (and their support staffs).

12 2.10 Producing Party: a Party or Non-Party that produces Disclosure or
13 Discovery Material in this action.

14 2.11 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
16 organizing, storing, or retrieving data in any form or medium) and their employees and
17 subcontractors.

18 2.12 Protected Material: any Disclosure or Discovery Material that is
19 designated as “CONFIDENTIAL.”

20 2.13 Receiving Party: a Party that receives Disclosure or Discovery Material
21 from a Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulated Protective Order cover not only Protected
24 Material (as defined above), but also (1) any information copied or extracted from Protected
25 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
26 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
27 Material. However, the protections conferred by this Stipulation and Order do not cover the
28 following information: (a) any information that is in the public domain at the time of disclosure

1 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving
2 Party as a result of publication not involving a violation of this Order, including becoming part
3 of the public record through trial or otherwise; and (b) any information known to the Receiving
4 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
5 who obtained the information lawfully and under no obligation of confidentiality to the
6 Designating Party. Any use of Protected Material at trial shall be governed by a separate
7 agreement or order.

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations imposed by
10 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
11 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
12 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
13 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
14 action, including the time limits for filing any motions or applications for extension of time
15 pursuant to applicable law.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under this Order
19 must take care to limit any such designation to specific material that qualifies under the
20 appropriate standards. The Designating Party must designate for protection only those parts of
21 material, documents, items, or oral or written communications that qualify – so that other
22 portions of the material, documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or retard the case development process or to impose unnecessary
27 expenses and burdens on other parties) expose the Designating Party to sanctions.

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1 If it comes to a Designating Party's attention that information or items that it designated
2 for protection do not qualify for protection, that Designating Party must promptly notify all other
3 Parties within ten (10) days of discovery that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
11 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected
12 material.

13 A Party or Non-Party that makes original documents or materials available for inspection
14 need not designate them for protection until after the inspecting Party has indicated which
15 material it would like copied and produced. During the inspection and before the designation, all
16 of the material made available for inspection shall be deemed "CONFIDENTIAL." After the
17 inspecting Party has identified the documents it wants copied and produced, the Producing Party
18 must determine which documents, or portions thereof, qualify for protection under this Order.
19 Then, before producing the specified documents, the Producing Party must affix the
20 "CONFIDENTIAL" legend to each page that contains Protected Material.

21 (b) for testimony given in deposition or in other pretrial or trial
22 proceedings, that the Designating Party shall identify on the record or in writing, within ten (10)
23 days of the initial circulation of a final transcript of the deposition, hearing, or other proceeding,
24 all protected testimony. The testimony will be treated as "CONFIDENTIAL" in its entirety until
25 the ten (10) day period expires.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information or item is stored the legend

1 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected within ten (10) days
4 of discovery, an inadvertent failure to designate qualified information or items does not, standing
5 alone, waive the Designating Party's right to secure protection under this Order for such
6 material. Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
10 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
12 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
13 right to challenge a confidentiality designation by electing not to mount a challenge promptly
14 after the original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging and
17 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been
18 made, the written notice must recite that the challenge to confidentiality is being made in
19 accordance with this specific paragraph of the Protective Order. The parties shall attempt to
20 resolve each challenge in good faith and must begin the process by conferring directly (in voice
21 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
22 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
23 the confidentiality designation was not proper and must give the Designating Party an
24 opportunity to review the designated material, to reconsider the circumstances, and, if no change
25 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
26 may proceed to the next stage of the challenge process only if it has engaged in this meet and
27 confer process first or establishes that the Designating Party is unwilling to participate in the
28 meet and confer process in a timely manner.

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
2 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
3 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
4 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
5 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party
8 to make such a motion including the required declaration within 21 days (or 14 days, if
9 applicable) shall automatically waive the confidentiality designation for each challenged
10 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
11 designation at any time if there is good cause for doing so, including a challenge to the
12 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
13 this provision must be accompanied by a competent declaration affirming that the movant has
14 complied with the meet and confer requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
16 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
19 file a motion to retain confidentiality as described above, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing Party's
21 designation until the court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order.
27 When the litigation has been terminated, a Receiving Party must comply with the provisions of
28 section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location and
2 in a secure manner that ensures that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
5 Party may disclose any information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party;

7 (b) the Receiving Party’s Outside Counsel of Record in this action, as
8 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this litigation;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
12 and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants,
15 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom
18 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement
19 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
20 court. After their designation pursuant to Paragraph 5.2(b), pages of transcribed deposition
21 testimony that reveal Protected Material must be separately bound by the court reporter and may
22 not be disclosed to anyone except as permitted under this Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
5 Party must:

6 (a) promptly notify in writing the Designating Party, unless the
7 litigation is a confidential proceeding under which that Party is legally prohibited from notifying
8 the Designating Party. Such notification shall include a copy of the subpoena or court order;

9 (b) subject to section (a) herein, promptly notify in writing the party
10 who caused the subpoena or order to issue in the other litigation that some or all of the material
11 covered by the subpoena or order is subject to this Protective Order. Such notification shall
12 include a copy of this Stipulated Protective Order; and

13 (c) subject to section (a) herein, cooperate with respect to all
14 reasonable procedures sought to be pursued by the Designating Party whose Protected Material
15 may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any information designated in this action as
18 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
19 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
20 shall bear the burden and expense of seeking protection in that court of its confidential material –
21 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
22 Party in this action to disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
24 IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by
26 a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by
27 Non-Parties in connection with this litigation is protected by the remedies and relief provided by
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1 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
2 seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request,
4 to produce a Non-Party's confidential information in its possession, and the Party is subject to an
5 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
6 Party shall:

7 1. promptly notify in writing the Requesting Party and the
8 Non-Party that some or all of the information requested is subject to a confidentiality agreement
9 with a Non-Party;

10 2. promptly provide the Non-Party with a copy of the
11 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and

13 3. make the information requested available for inspection by
14 the Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this
16 court within 14 days of receiving the notice and accompanying information, the Receiving Party
17 may produce the Non-Party's confidential information responsive to the discovery request. If the
18 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
19 in its possession or control that is subject to the confidentiality agreement with the Non-Party
20 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
21 bear the burden and expense of seeking protection in this court of its Protected Material.

22 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
24 Material to any person or in any circumstance not authorized under this Stipulated Protective
25 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
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27 ¹ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
confidentiality interests in this court.

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
2 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
3 made of all the terms of this Order, and (d) request such person or persons to execute the
4 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

10 Any inadvertent disclosure or production of any document(s) shall not be deemed a
11 waiver of, nor a prejudice to, any privilege with respect to such document(s) or of any work
12 product doctrine or immunity that may attach thereto, provided that the Producing Party notifies
13 the Receiving Party of such disclosure in writing and within a reasonable time after the date that
14 the inadvertent production is discovered or reasonably should have been discovered. The
15 Producing Party may demand the return of such document(s), in which case all copies of such
16 document(s) shall be returned to the Producing Party within five (5) days of the demand.

17 If a dispute arises concerning the privileged nature of the document(s) demanded or
18 returned, and in the event the parties cannot resolve the dispute without Court intervention, the
19 Producing Party may attempt to resolve the matter pursuant to Paragraph 3 of this Court's
20 Standing Order governing Discovery & Dispute Procedures. Until and unless such dispute is
21 resolved, the Receiving Party will not use or refer to any privileged information contained with
22 the document(s) at issue following their return, except to the extent such information is reflected
23 in any applicable privilege log.

24 12. MISCELLANOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to disclosing or

1 producing any information or item on any ground not addressed in this Stipulated Protective
2 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
3 the material covered by this Protective Order.

4 12.3 Filing Protected Material. Without written permission from the
5 Designating Party or a court order secured after appropriate notice to all interested persons, a
6 Party may not file in the public record in this action any Protected Material. A Party that seeks
7 to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
8 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
10 only upon a request establishing that the Protected Material at issue is privileged or otherwise
11 entitled to protection under the law or this Order. If a Receiving Party's request to file Protected
12 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
13 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-
14 5(e) unless otherwise instructed by the court.

15 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,
16 as defined in paragraph 4, each Receiving Party must return all Protected Material to the
17 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
18 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
19 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
20 the Receiving Party must submit a written certification to the Producing Party (and, if not the
21 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
22 category, where appropriate) all the Protected Material that was returned or destroyed and
23 (2)affirms that the Receiving Party has not retained any copies, abstracts, compilations,
24 summaries or any other format reproducing or capturing any of the Protected Material.
25 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Protected Material. Any such archival copies that

1 contain or constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: May 20, 2011

WILSON SONSINI GOODRICH & ROSATI
A Professional Corporation

6 By: s/ Matthew R. Reed
7 Matthew R. Reed

8 Attorneys for Plaintiff
9 JANE DOE

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11 Dated: May 20, 2011

BUCHALTER NEMER
A Professional Corporation

12 By: s/ Mia S. Blackler
13 Mia S. Blackler

14 Attorneys for Defendants
15 GIUSEPPE PENZATO and KESIA PENZATO

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17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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19 DATED: May 23, 2011

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The Honorable Maria-Elena James
Magistrate Judge of the United States District
Court for the Northern District of California

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, declare under penalty of perjury that I
4 have read in its entirety and understand the Stipulated Protective Order that was issued by the
5 United States District Court for the Northern District of California on _____, 2011 in the case
6 of *Jane Doe v. Giuseppe Penzato, et al.*, civil action no. 3:10-cv-05154-MEJ. I agree to comply
7 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
8 acknowledge that failure to so comply could expose me to sanctions and punishment in the
9 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
10 item that is subject to this Stipulated Protective Order to any person or entity except in strict
11 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 | City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

Signature: _____
[signature]

1 **DECLARATION OF CONSENT**

2 Pursuant to General Order 45, the undersigned certifies that concurrence in the filing of
3 this document was obtained from each of the other signatories.

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5 Dated: May 20, 2011

By: s/ Caroline Wilson
Caroline Wilson

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